

Ethan Preston (263295)  
ep@eplaw.us  
PRESTON LAW OFFICES  
4054 McKinney Avenue, Suite 310  
Dallas, Texas 75204  
Telephone: (972) 564-8340  
Facsimile: (866) 509-1197

Jacob U. Ginsburg (*pro hac vice* pending)  
jginsburg@creditlaw.com  
teamkimmel@creditlaw.com  
KIMMEL & SILVERMAN, P.C.  
30 East Butler Ave.  
Ambler, PA 19002  
Telephone: (267) 468-5374  
Facsimile: 215-540-8817

*Attorneys for Plaintiff Jonathan Avery, individually,  
and on behalf of all others similarly situated*

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

JONATHAN AVERY, *individually  
and on behalf of all others similarly  
situated,*

Plaintiff,

v.

GLOBAL EXCHANGE VACATION  
CLUB, a California corporation, and  
GLOBAL EXCHANGE  
DEVELOPMENT CORP., a Nevada  
corporation, RESORT VACATIONS,  
INC., a Nevada corporation, and  
DOES 1-10, inclusive,

Defendants.

No. 8:23-cv-02071

**CLASS ACTION COMPLAINT  
FOR**

**(1) VIOLATIONS OF THE  
TELEPHONE CONSUMER  
PROTECTION ACT, 47  
U.S.C. § 227(c)(5) AND 47  
C.F.R. § 64.1200(c) AND**

**(2) VIOLATIONS OF THE  
TELEPHONE CONSUMER  
PROTECTION ACT, 47  
U.S.C. § 227(c)(5) AND 47  
C.F.R. § 64.1200 (d).**

**JURY TRIAL DEMANDED**

**CLASS-ACTION COMPLAINT**

Plaintiff, Jonathan Avery (“Avery” or “Plaintiff”) individually and on behalf of all others similarly situated, files this Class-Action Complaint against Defendants Global Exchange Vacation Club (“GEVC”), Global Exchange Development Corp. (“GEDC”) Resort Vacations, Inc., (“RVI”) and Does 1 to 10 (hereinafter collectively referred to as “Defendants”). In support thereof, Plaintiff states as follows:

1 **NATURE OF THE CASE**

2 1. Plaintiff brings this action individually and on behalf of all others  
3 similarly situated, seeking damages and any other available legal or equitable  
4 remedies resulting from the unlawful actions of Defendants. Defendants violated  
5 Plaintiff and the putative class-members' rights by making two or more solicitation  
6 calls to residential subscribers whose numbers were registered on the Do Not Call  
7 Registry. Those acts and omissions, which are described at length herein, were in  
8 violation of the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227,  
9 *et seq.* and the TCPA's corresponding regulations promulgated by the Federal  
10 Communications Commission ("FCC") at 47 C.F.R. § 64.1200 *et seq.*

11 **BACKGROUND ON THE TCPA**

12 2. In 1991, after passage with bipartisan support in Congress, President  
13 George H.W. Bush signed the TCPA into law, to protect consumers' privacy  
14 rights—specifically, the right to be left alone from unwanted telemarketing calls.

15 3. A leading sponsor of the TCPA described telemarketing "robocalls"  
16 the "scourge of modern civilization." 137 Cong. Rec. 30821 (1991).

17 4. The TCPA, through the accompanying FCC regulations, 47 C.F.R. §  
18 64.1200(c) *et seq.*, affords special protections for "residential subscribers" who  
19 register their phone numbers on the National Do Not Call Registry.

20 5. Since 2003, persons who register cell phone numbers on the Do Not  
21 Call registry have been considered to be "residential subscribers" for the purpose  
22 of 227(c)(5) and the Do Not Call registry. *In Re Rules & Regulations Implementing*  
23 *the Tel. Consumer Prot. Act of 1991*, 18 F.C.C. Rcd. 14014, 14039 (2003) ("we  
24 will presume wireless subscribers who ask to be put on the national do-not-call list  
25 to be 'residential subscribers.'")

26 6. 47 U.S.C. § 227(c)(5) and 47 C.F.R. § 64.1200(c) provide that each  
27 person who receives more than one call within a 12-month period on their phone,  
28 where that called party did not provide express written consent upon a clear and

1 conspicuous disclosure from the telemarketer, after the phone number was  
2 registered on the National Do Not Call Registry for more than 31 days is entitled to  
3 recover a penalty of \$500 per call, and up to \$1,500 per call if the TCPA is  
4 willfully or knowingly violated.

5 7. The TCPA also provides protections for persons who receive  
6 prerecorded or artificial voice calls without the caller (or the company acting on  
7 the caller's behalf) first obtaining the recipient's prior express written consent to  
8 receive such calls. *See* 47 U.S.C. § 227(b)(1); 47 C.F.R. §§ 64.1200(a)(3), (f)(9).  
9 The penalty for violating these provisions is \$500 per call and up to \$1,500 per call  
10 placed in willful violation of the TCPA. 47 U.S.C. § 227(b)(3)

11 8. Decades after the TCPA passed into law, it is still unfortunately the  
12 case that “month after month, unwanted telemarketing calls and texts top the list of  
13 consumer complaints received by the Federal Communications Commission.”  
14 Omnibus TCPA Order, 30 FCC Rcd. 7961, 7964 (F.C.C. July 10, 2015).

15 9. In fact, in 2021 alone, there were over five million complaints from  
16 Americans to the FTC about unwanted telemarketing calls. Federal Trade  
17 Comm'n, *FTC Issues Biennial Report to Congress on the National Do Not Call*  
18 *Registry* (Jan. 5, 2022), [https://www.ftc.gov/news-events/news/press-](https://www.ftc.gov/news-events/news/press-releases/2022/01/ftc-issues-biennial-report-congress-national-do-not-call-registry)  
19 [releases/2022/01/ftc-issues-biennial-report-congress-national-do-not-call-registry](https://www.ftc.gov/news-events/news/press-releases/2022/01/ftc-issues-biennial-report-congress-national-do-not-call-registry).

20 10. The private right of enforcement of the TCPA is critical to stopping  
21 the proliferation of these unwanted telemarketing calls. For example, while the  
22 Federal Communications Commission levied over \$200 million in penalties against  
23 telemarketers between 2015 and 2018, it collected less than \$7,000 of that amount.  
24 *See* Sarah Krouse, *The FCC Has Fined Robocallers \$208 Million. It's Collected*  
25 *\$6,790*, The Wall Street Journal, March 28, 2019, [https://www.wsj.com/articles/](https://www.wsj.com/articles/the-fcc-has-fined-robocallers-208-million-its-collected-6-790-11553770803)  
26 [the-fcc-has-fined-robocallers-208-million-its-collected-6-790-11553770803](https://www.wsj.com/articles/the-fcc-has-fined-robocallers-208-million-its-collected-6-790-11553770803).

## 27 JURISDICTION AND VENUE

28 11. This Court has subject-matter jurisdiction over the TCPA claims in

1 this action under 28 U.S.C. § 1331, which grants this court original jurisdiction of  
2 all civil actions arising under the laws of the United States. *See Mims v. Arrow Fin.*  
3 *Servs., LLC*, 565 U.S. 368, 386-87 (2012) (confirming that 28 U.S.C. § 1331 grants  
4 the United States district courts federal-question subject-matter jurisdiction to hear  
5 private civil suits under the TCPA).

6 12. This Court has personal jurisdiction over Defendants which are  
7 headquartered and incorporated, and conduct business, in the State of California.

8 13. Defendants maintain their headquarters within this District in the State  
9 of California.

10 14. Accordingly, personal jurisdiction exists, and venue is proper under  
11 28 U.S.C. § 1391(b)(1).

## 12 PARTIES

13 15. Plaintiff Jonathan Avery is an individual who resides in Texas.

14 16. Plaintiff is a “person” as that term is defined by 47 U.S.C. §153(39).

15 17. Defendant Global Exchange Vacation Club (“GEVC”) is a California  
16 corporation which registered 27405 Puerta Real, Suite 100, Mission Viejo,  
17 California 92691 as its address with the California Secretary of State.

18 18. GEVC is the homeowner association for a multi-location time-share  
19 plan with accommodations in locations worldwide. GEVC holds (and sells) various  
20 real estate interests including timeshares.

21 19. Defendant Global Exchange Development Corp. (“GEDC”) is a  
22 Nevada corporation which registered 30448 Rancho Viejo Road, Suite 150, San  
23 Juan Capistrano, California 92675 as its address with the California Secretary of  
24 State.

25 20. GEDC manages GEVC, and uses telemarketing to market GEVC’s  
26 timeshares via vendors.

27 21. Defendant Resort Vacations, Inc. (“RVI”) is a Nevada corporation  
28 which registered 27405 Puerta Real, Suite 100, Mission Viejo, California 92691 as

1 its address with the California Secretary of State. RVI is a real estate brokerage  
2 which participates with GEDC in selling GEVC's timeshares.

3 22. Each Defendant is a "person" as that term is defined by 47 U.S.C.  
4 §153(39).

5 23. Plaintiff is currently ignorant of the true names and capacities,  
6 whether individual, corporate, associate, or otherwise, of the Defendants sued  
7 herein under the fictitious names Does 1 through 10, inclusive, and therefore, sues  
8 such Defendants by such fictitious names. Plaintiff will seek leave to amend this  
9 complaint to allege the true names and capacities of said fictitiously named  
10 Defendants when their true names and capacities have been ascertained. Plaintiff is  
11 informed and believes, and based thereon alleges, that each of the fictitiously  
12 named Doe Defendants is legally responsible in some manner for the events and  
13 occurrences alleged herein, and for the damages suffered by Plaintiff.

14 24. Plaintiff is informed and believes, and therefore alleges, that all  
15 Defendants, including the fictitious Doe Defendants, were at all relevant times  
16 acting as actual agents, ostensible agents, conspirators, partners, alter egos, and/or  
17 joint venturers and employees of all other defendants, and that all acts alleged  
18 herein occurred within the course and scope of said agency, employment,  
19 partnership, and joint venture, conspiracy or enterprise, and with the express and/or  
20 implied permission, knowledge, consent, authorization and ratification of their co-  
21 Defendants; however, each of these allegations are deemed "alternative" theories  
22 whenever not doing so would result in a contraction with the other allegations.

23 25. Defendants acted through their agents, employees, officers, members,  
24 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,  
25 representatives, and insurers.

26 26. All Defendants, including GEVC, GEDC, RVI and Does 1 through  
27 10, are collectively referred to as "Defendants." Whenever this complaint refers to  
28 any act of Defendants or acts of GEVC and/or GEDC and/or RVI, the allegations

1 shall be deemed to mean the act of those defendants named in the particular cause  
2 of action, and each of them, acting individually, jointly and severally, unless  
3 otherwise alleged.

#### 4 **FACTUAL ALLEGATIONS**

5 27. Defendants use telemarketers to solicit business from potential  
6 consumers across the country, including in California, to purchase real estate  
7 interests, including timeshares held by GEVC.

8 28. On information and belief, GEVC and RVI are simply corporate  
9 shells used to hold and maintain timeshare interests, and have few (if any)  
10 employees, and little other property, operations, or business functions. GEDC is  
11 responsible for operating and managing GEVC and RVI.

12 29. On information and belief, GEDC employs, controls, and supplies the  
13 individual natural persons—the officers, employees, and agents—who actually  
14 operate and control GEVC and RVI's day-to-day business. GEDC supplies the  
15 personnel who physically execute contracts for GEVC and RVI, operate the  
16 business of marketing to, registering and enrolling timeshare owners in GEVC's  
17 system, and perform any other aspect of GEVC's business that requires human  
18 involvement.

19 30. Because Defendants maintain the same natural persons as their agents,  
20 officers, employees, and other personnel who operate their businesses in common,  
21 and who are responsible for Defendants' conduct, it is not possible to attribute the  
22 actions of these individuals to one Defendant without also attributing them to all  
23 Defendants.

24 31. Defendants market GEVC's timeshares through aggressive, illegal,  
25 outbound telemarketing campaigns. These telemarketing campaigns are conducted  
26 for Defendants' benefit and on their behalf. Defendants and their telemarketers  
27 initiate telemarketing calls from offshore call centers to telephone numbers on the  
28 Do-Not-Call registry, assess the recipient's interest in GEVC's timeshares, then



1 transfer the recipients to call centers that use GEVC's name and are operated by  
2 Defendants' actual agents, ostensible agents, conspirators, partners, alter egos,  
3 and/or joint venturers to arrange in-person sales presentations at Defendants'  
4 offices. On information and belief, Defendants have granted their telemarketers  
5 access to their sales and enrollment systems and use of GEVC's name, and  
6 therefore granted the telemarketers their apparent authority.

7 32. Defendants systemically fail to honor the national Do Not Call List.  
8 Defendants do not have express consent to call telephone users whose telephone  
9 number is on the Do Not Call List.

10 33. Defendants also use misleading or inaccurate caller identification  
11 information, including "spoofed" telephone numbers (that is, replacing the actual  
12 originating number displayed to recipients caller ID systems—which could be used  
13 to reliably identify the vendors' calls—with a falsified ostensible outgoing  
14 telephone number).<sup>1</sup>

15 34. Defendants' use of different trade names helps them to attribute

16 <sup>1</sup> According to the FTC, technological advancements (like Voice Over Internet  
17 Protocol (VoIP)) have increased the number of illegal telemarketing calls made  
18 to telephone numbers on the National Do Not Call Registry and allowed  
19 telemarketers to evade detection by "spoofing" the caller ID information that  
20 accompanies their calls:

21 VoIP technology allows callers, including law-breakers, to make higher  
22 volume of calls inexpensively from anywhere in the world... Technological  
23 developments also allow illegal telemarketers to easily fake the caller ID  
24 information that accompanies their calls, which allows them to conceal their  
25 identity from consumers and law enforcement. In 2017, reports of  
26 "neighborhood" caller ID spoofing, where the caller displays a caller ID  
27 number with the same area code and exchange as the called party, have also  
28 increased. Further, many telemarketers use automated dialing technology to  
29 make calls that deliver prerecorded messages (commonly referred to as  
30 "robocalls", which allow violators to make very high volumes of illegal calls  
31 without significant expense. The net effect of these technological  
32 developments is that individuals and companies who do not care about  
33 complying with the Registry or other telemarketing laws are able to make  
34 more illegal telemarketing calls cheaply and in a manner that makes it  
35 difficult for the FTC and other law enforcement agencies to find them.

36 Federal Trade Commission, Biennial Report to Congress, Under the Do Not  
37 Call Registry Fee Extension Act of 2007: The Operation of the National Do Not  
38 Call Registry During Fiscal Year 2016 and Fiscal Year 2017 3 (Dec. 2017),  
[https://www.ftc.gov/reports/biennial-report-congress-under-do-not-call-  
registry-fee-extension-act-2007-operation](https://www.ftc.gov/reports/biennial-report-congress-under-do-not-call-registry-fee-extension-act-2007-operation).

1 particular calls to specific telemarketing campaigns, but makes it difficult for  
2 consumers to do the same or even identify Defendants. Defendants' use of  
3 spoofing entices recipients to answer telephone calls that they would not otherwise  
4 answer, and makes it difficult to attribute particular calls to Defendants. These  
5 practices allow Defendants to evade accountability for their telemarketing  
6 activities, and make it difficult for call recipients to avoid or otherwise respond to  
7 Defendants' calls (for instance, asking to be placed on Defendants' own Do Not  
8 Call list). Call recipients are only able to avoid Defendants' unwanted calls if they  
9 risk missing *wanted* calls, and cannot identify which companies they have  
10 instructed not to call them.

11 35. Nonetheless, Defendants made, and continues to make, these  
12 telemarketing calls to consumers without their consent. Defendants ratify the  
13 telemarketers' conduct by accepting transfers and referrals of call recipients and  
14 payments from the consumers who purchase GEVC's timeshares, and by paying  
15 commission to these telemarketers, despite knowing that the calls resulting in the  
16 enrollment violated the TCPA. Defendants have knowingly and actively accepted  
17 money that originated through illegal telemarketing calls, and paid and/or approved  
18 payment of commissions to telemarketers for such calls.

19 36. To the extent Defendants used any third-party telemarketers to make  
20 any calls to consumers, they were and are at all relevant times, acting as actual  
21 agents, ostensible agents, conspirators, partners and/or joint venturers and  
22 employees of Defendants, and the acts alleged herein occurred within the course  
23 and scope of said agency, employment, partnership, joint venture, conspiracy or  
24 enterprise, and with the express and/or implied permission, knowledge, consent,  
25 authorization and ratification of Defendants.

26 37. Defendants operate, manage, monitor, and/or control these  
27 telemarketing campaigns through the data collected about the telemarketing  
28 campaigns, and the feedback Defendants give to the telemarketers (including,



1 ultimately, the commissions Defendants pay to their telemarketers). Defendants are  
2 legally responsible for ensuring they and/or any third-party telemarketers complied  
3 with the TCPA, even if they themselves did not itself make the calls. Defendants  
4 are vicariously liable for their agents' TCPA violations. Defendants not only  
5 controlled the result of the work, but also the manner and means by which it was  
6 accomplished through interim instructions.

7 38. There is no material distinction between telemarketing calls made by  
8 Defendants and/or by call centers who are technically third parties. The FCC's  
9 regulations "generally establish that the party on whose behalf a solicitation is  
10 made bears ultimate responsibility for any violations." *In the Matter of Rules and*  
11 *Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 10 FCC Rcd.  
12 12391, 12397, ¶13 (1995). The FCC reiterated this principle in 2013, when it  
13 explained that "a seller . . . may be held vicariously liable under federal common  
14 law principles of agency for violations of either section 227(b) or section 227(c)  
15 that are committed by third-party telemarketers." *In the Matter of the Joint Petition*  
16 *Filed by Dish Network, LLC*, 28 FCC Rcd. 6574, 6574 (2013). *See also Campbell-*  
17 *Ewald Co. v. Gomez*, 577 U.S. 153, 168 (2016) ("no cause to question" precept  
18 that "under federal common-law principles of agency, there is vicarious liability  
19 for TCPA violations"); *Gomez v. Campbell-Ewald Co.*, 768 F.3d 871, 878 (9th Cir.  
20 2014) (citing Restatement (Third) of Agency (2006) §§ 2.01, 2.03, 4.01 for  
21 proposition that vicarious liability under the TCPA "may be established by express  
22 authorization, implicit authorization, or ratification").

23 39. At all times relevant hereto, Plaintiff, Jonathan Avery, owned a cell  
24 phone, the number for which was (469) XXX-3933.

25 40. Plaintiff registered that cell phone number on the Federal Do Not Call  
26 Registry in May of 2020 in order to obtain solitude from invasive and irritating  
27 telemarketing calls.

28 41. At all times relevant hereto, Avery used his cell phone primarily for

1 residential purposes.

2 42. Avery never provided his telephone number to Defendants or their  
3 agents for any purpose whatsoever. Defendants and their agents did not otherwise  
4 obtain Avery's prior express consent to make telemarketing calls to his telephone  
5 number. Defendants did not call to collect an existing obligation, and Avery did  
6 not request Defendants to call (and, indeed, he was not aware of Defendants prior  
7 to these calls). Defendants never had valid consent to call Avery. *See* 47 C.F.R. §  
8 64.1200(c)(2)(ii) (requiring "a signed, written agreement between the consumer  
9 and seller which states that the consumer agrees to be contacted by this seller").

10 43. Between July 1, 2021, and July 8, 2022, Defendants made at least ten  
11 (10) solicitation calls to Avery's cell phone soliciting timeshare interests.

12 44. The first call that took place on July 1, 2021. In that call, Avery  
13 engaged with the calling party in order to identify the calling party and learned it  
14 was GEVC because the calling party attempted to schedule an appointment at a  
15 GEVC center with Mr. Avery and his wife.

16 45. The calling party told Avery to appear for an in person showing at  
17 3225 West Airport Freeway, Suite 100, Irving, Texas, which is a GEVC location.

18 46. In October 2021, Mr. Avery sent written communication to GEVC,  
19 which, inter alia, informed GEVC that the call was unlawful and in violation of the  
20 TCPA.

21 47. In that correspondence, Avery also demanded a copy of GEVC's  
22 internal do-not-call policies.

23 48. GEVC failed to provide a copy of its internal do-not-call policies as  
24 Avery demanded.

25 49. To the extent any consent or business relationship was established in  
26 the July 1, 2021 call (where Avery engaged for the sole purpose of identifying the  
27 calling party), Avery's subsequent October 2021 letter clearly and unequivocally  
28 terminated such consent and/or relationship.

50. Despite the fact that Avery made it known he did not want any more telemarketing calls from GEVC, the annoying and invasive marketing calls continued.

51. Specifically, GEVC called Avery's cell phone on at least six instances in November and December 2021 (the dates, times and calling party's number listed in the chart below).

52. In each of those instances, the calling party promoted its timeshare properties and "vacation club" and described the aforementioned Irving, Texas office. On information and belief, all of the outgoing numbers GEVC used to call Avery were spoofed, and were and are not Defendants' real telephone numbers.

53. Accordingly, Avery understands GEVC is responsible for those calls.

54. In March of 2022, Avery wrote another correspondence to GEVC articulating once again that the calls were unlawful.

55. Despite the *second* demand that the calls cease and desist, GEVC called Avery on July 18, 2022, attempting to schedule an in-person appointment to promote GEVC timeshare properties.

56. A non-exhaustive list of the offending calls from GEVC, of which Avery is currently aware, is listed below:

<u>Date:</u>	<u>Caller ID:</u>
July 1, 2021	(469) 525-5663
November 7, 2021	(469) 551-5483
November 7, 2021	(469) 531-1379
November 15, 2021	(469) 576-8082
November 15, 2021	(469) 594-0612
December 7, 2021	(469) 550-8464
December 7, 2021	(469) 550-8464
July 18, 2022	(475) 276-0924
July 18, 2022	(424) 577-9491

1 July 18, 2022

(281) 667-4332

2 57. These calls were not made for “emergency purposes,” but rather for  
3 solicitation purposes.

4 58. As a result of the foregoing, Avery experienced frustration,  
5 annoyance, irritation and a sense that his privacy had been invaded by Defendants.

6 59. The foregoing acts and omissions by Defendants were in violation of  
7 the National Do-Not-Call Rules and Internal Do-Not-Call Rules of the TCPA and  
8 its corresponding regulations.

9 **CLASS ALLEGATIONS**

10 60. Pursuant to Federal Rule of Civil Procedure 23(a), (b)(2) and (b)(3),  
11 Plaintiff brings this lawsuit as a class action on behalf of himself and all others  
12 similarly situated. This action satisfies the requirements of numerosity,  
13 commonality, typicality, and adequacy of representation. Plaintiff seeks to  
14 represent the following classes:

15 **National Do-Not-Call Registry (NDNC) Class:** All persons in the  
16 United States who received two or more telemarketing calls to their  
17 cellular or residential telephone numbers within any 12-month period  
18 by or on behalf of Defendants, from four years prior to the date of this  
complaint through the date the Court certifies the class, while such  
number was registered with the National Do-Not-Call Registry.

19 **Internal Do-Not-Call Registry (IDNC) Class:** All persons in the  
20 United States who received two or more telemarketing calls to their  
21 cellular or residential telephone numbers within any 12-month period  
22 by or on behalf of Defendants, from four years prior to the date of this  
complaint through the date the Court certifies the class, during which  
time Defendants had not instituted or maintained the procedures or  
minimum standards required under 47 C.F.R. § 64.1200(d).

23 61. Excluded from the NDNC and IDNC Classes are any entity in which  
24 Defendants have a controlling interest or which has a controlling interest in  
25 Defendants, and Defendants’ owners, affiliates, agents, legal representatives,  
26 predecessors, successors, assigns, and employees. Also excluded are the judge and  
27 staff to whom this case is assigned, and any member of the judge’s immediate  
28 family. Plaintiff reserves the right to amend or modify the class definitions

1 consistent with the record.

2 62. The putative class members' identities are readily ascertainable from  
3 Defendants' records or records within Defendants' control.

4 63. Plaintiff's claims are typical of the class members, as all are based on  
5 the same facts and legal theories.

6 64. Plaintiff will fairly and adequately protect the interests of the Class  
7 defined in this complaint. Plaintiff will fairly and adequately protect the interests of  
8 the class members insofar and Plaintiff has no interests that are averse to the absent  
9 class members. Plaintiff is committed to vigorously litigating this matter. Neither  
10 the Plaintiff nor his counsel have any interests which might cause them not to  
11 vigorously pursue this class action lawsuit. The Plaintiff has retained counsel with  
12 experience in handling consumer lawsuits, complex legal issues, and class actions,  
13 and neither the Plaintiff nor his attorneys have any interests which might cause  
14 them not to vigorously pursue this action.

15 65. This action has been brought, and may properly be maintained, as a  
16 class action pursuant to the provisions of Rule 23 of the Federal Rules Civil  
17 Procedure because there is a well-defined community interest in the litigation.

18 66. Class Members are so numerous that the individual joinder of all class  
19 members is impracticable. Plaintiff alleges that there are at least forty members of  
20 each class. There are no likely difficulties to be encountered in managing this case  
21 as a class action.

22 67. Common questions of law and fact exist to all Class Members and  
23 predominate over questions affecting only individual Class members. Common  
24 legal and factual questions include, but are not limited to the following:

- 25 a. Whether Defendants scrub or otherwise consult the federal Do  
26 Not Call registry before calling numbers;  
27 b. Whether Defendants have meaningful and enforced internal do-  
28 not-call policies and procedures;  
c. Whether Defendants' conduct violates 47 U.S.C. § 227(c) and

the corresponding rules and regulations implementing the TCPA; and,

- d. Whether Plaintiff and the putative class members are entitled to increased damages for each violation based on the willfulness of Defendants' conduct.

68. Plaintiff and the putative class members have claims arising out of Defendants' uniform course of conduct, namely improperly placing solicitation calls to Plaintiff and the putative class members.

69. The class action mechanism is superior to other available means for the fair and efficient adjudication of this case. Each individual class member may lack the resources to undergo the burden and expense of individual prosecution of the complex and extensive litigation necessary to establish Defendants' liability. Individualized litigation increases the delay and expense to all parties and multiplies the burden on the judicial system presented by the complex legal and factual issues of this case. Individualized litigation also presents a potential for inconsistent and contradictory judgments. In contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court on the issue of Defendants' liability. Class treatment of the liability issues will ensure that all claims and claimants are before this Court for consistent adjudication of the liability issues.

70. Based on discovery and further investigation, Plaintiff may, in addition to moving for class certification, use modified definitions of the class, class claims, and the class period, and/or seek class certification only as to particular issues as permitted under Rule 23. Such modified definitions may be more expansive to include consumers excluded from the foregoing definitions.

71. Based on information and belief, Defendants continue to engage in the improper practices discussed above. Injunctive relief is necessary and appropriate to enjoin Defendants' conduct and to prevent irreparable harm to Plaintiff and Class members for which they have no adequate remedy at law.



**FIRST CAUSE OF ACTION**  
**(Violation of 47 U.S.C. § 227(c)(5) and/or 47 C.F.R. § 64.1200(c))**

72. Plaintiff incorporates by reference the foregoing allegations as if fully set forth herein.

73. Plaintiff brings this Count individually and on behalf of all others similarly situated.

74. The TCPA provides that it is a violation of the law for a person whose residential or cellular telephone number is registered on the National Do Not Call Registry to receive more than one solicitation call on their phone “within any 12-month period by or on behalf of the same entity.” *See* 47 U.S.C. §§ 227(c)(1), (c)(5); 47 C.F.R. § 64.1200(c)(ii), (e).

75. The penalty for each call made in violation of the TCPA’s restrictions on placing telemarketing calls to numbers registered on the National Do Not Call Registry is \$500 per violation and up to \$1,500 per violation if the violation is determined to be willful. *See* 47 U.S.C. § 227(c)(5).

76. In addition, the TCPA allows the Court to enjoin Defendants’ violations of the TCPA’s regulations prohibiting calls and texts to phone numbers registered on the National Do Not Call Registry. *See* 47 U.S.C. § 227(c)(5)(A).

77. By calling and texting Plaintiff and the putative class members after their numbers were registered on the National Do Not Call Registry, Defendants violated the TCPA, including but not limited to, 47 U.S.C. § 227(c)(1) and the TCPA’s corresponding regulations.

78. On information and belief, Defendants and/or their agents routinely make outgoing calls or send texts to residential and cellular telephones in the regular course of their telemarketing campaigns alleged above. Defendants violated 47 C.F.R. § 64.1200(c) by initiating two or more telephone solicitations to wireless and wireline residential telephone subscribers such as Plaintiff and the other NDNC Class members. Defendants violated 47 C.F.R. § 64.1200(c).

79. Defendants' violations are knowing and willful because Defendants knew or should have known that Plaintiff and NDNC Class members had their numbers registered on the Do Not Call Registry.

80. The acts and/or omissions of Defendants were done unfairly, unlawfully, intentionally, recklessly, willfully and absent any legal justification or excuse.

81. Plaintiff and NDNC Class members are entitled to damages of \$500.00 per violation for each call placed and text sent by Defendants and up to \$1,500.00 per violation if the Court finds Defendants willfully violated the TCPA.

82. Plaintiff, individually, and on behalf of the other NDNC Class members, seeks injunctive and equitable relief under 47 U.S.C. § 227(c)(5) against Defendants to stop their violations of the TCPA.

83. Plaintiff brings this action as a private attorney general, and to vindicate and enforce an important right affecting the public interest. Plaintiff and the NDNC Class are therefore entitled to an award of attorneys' fees under Code of Civil Procedure section 1021.5 for bringing this action.

**SECOND CAUSE OF ACTION**  
**(Violation of 47 U.S.C. § 227(c)(5) and/or 47 C.F.R. § 64.1200(d))**

84. Plaintiff incorporates by reference the foregoing allegations as if fully set forth herein.

85. Plaintiff brings this Count individually and on behalf of all others similarly situated.

86. Section 227(c) of the TCPA requires the FCC to enact regulations to protect residential telephone subscribers' privacy rights. The TCPA provides a private right of action for failing to maintain and/or provide internal do-not-call policies. 47 U.S.C. § 227(c)(5).

87. Through those powers delegated by Congress, the FCC promulgated regulations including CFR 64.1200 which provides in relevant part:

No person or entity shall initiate any call for telemarketing purposes to a residential telephone subscriber unless such person or entity has instituted procedures for maintaining a list of persons who request not to receive telemarketing calls made by or on behalf of that person or entity. The procedures instituted must meet the following minimum standards:

- (1) Written policy. Persons or entities making calls for telemarketing purposes must have a written policy, available upon demand, for maintaining a do-not-call list.
- (2) Training of personnel engaged in telemarketing. Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the do-not-call list.
- (3) Recording, disclosure of do-not-call requests. If a person or entity making a call for telemarketing purposes (or on whose behalf such a call is made) receives a request from a residential telephone subscriber not to receive calls from that person or entity, the person or entity must record the request and place the subscriber's name, if provided, and telephone number on the do-not-call list at the time the request is made [and] must honor a residential subscriber's do-not-call request within a reasonable time from the date such request is made. . . .
- (4) Identification of sellers and telemarketers. A person or entity making a call for telemarketing purposes must provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges.

47 C.F.R. § 64.1200(d), (e).

88. Defendants and/or their agents violated 47 C.F.R. § 64.1200(d)(3) by making telemarketing calls while they failed to honor consumer requests not to receive calls from or on behalf of Defendants, and/or did not record such requests. Even after Plaintiff clearly expressed his desire not to receive any more telephone calls from Defendants, Defendants made two or more calls to Plaintiff, in order to sell their timeshare interests. Defendants continue to make telemarketing calls when they fail to honor consumer requests not to receive calls from or on behalf of Defendants.

89. Defendants and/or their agents violated 47 C.F.R. § 64.1200(d)(1) by making telemarketing calls while they did not have a written policy for

1 maintaining a do-not-call list, and/or such policy was not available upon demand.  
2 Plaintiff requested Defendants' written policy for maintaining a do-not-call list in  
3 October 2021, and Defendants never provided one. Defendants continue to make  
4 telemarketing calls when they either do not have a written policy for maintaining a  
5 do-not-call list, or do not provide it on demand.

6 90. On information and belief, and in addition or the alternative,  
7 Defendants and/or their agents violated 47 C.F.R. § 64.1200(d)(2) by making  
8 telemarketing calls while they had failed to train their personnel in the existence  
9 and use of their do-not-call list. Plaintiff alleges various violations of 47 C.F.R. §  
10 64.1200(d) above. To the extent Defendants claim they instituted and maintained  
11 procedures and minimum standards prescribed by 47 C.F.R. § 64.1200(d), but that  
12 their personnel made a mistake implementing their do-not-call list, Defendants  
13 failed to adequately train their personnel.

14 91. Defendants and/or their agents violated 47 C.F.R. § 64.1200(d)(4) by  
15 making telephone calls for telemarketing purposes which concealed the name of  
16 the individual caller, Defendants' names, and a telephone number at which  
17 Defendants could be contacted. Specifically, Defendants' spoofed the outgoing  
18 telephone numbers used to call IDNC Class members, and/or their telemarketers  
19 fail to identify Defendants until after the telemarketer assesses the call recipients'  
20 interest in Defendants' vacation packages.

21 92. Defendants violated 47 C.F.R. § 64.1200(d) by initiating two or more  
22 telephone solicitations to wireless and wireline residential telephone subscribers  
23 such as Plaintiff and the other IDNC Class members while failing to institute or  
24 maintain procedures and minimum standards required under 47 C.F.R. §  
25 64.1200(d).

26 93. Defendants violated Plaintiff's rights under § 227(c) and CFR §  
27 64.1200(d) through the aforementioned acts and omissions.

28 94. Defendants' violations were knowing and willful because they knew

1 they had failed to institute or maintain procedures and minimum standards required  
2 under 47 C.F.R. § 64.1200(d) in the manner alleged above.

3 95. The acts and/or omissions of Defendants were done unfairly,  
4 unlawfully, intentionally, recklessly, willfully and absent any legal justification or  
5 excuse.

6 96. Plaintiff and IDNC Class members are entitled to damages of \$500.00  
7 per violation for each call placed and text sent by Defendants and up to \$1,500.00  
8 per violation if the Court finds Defendants willfully violated the TCPA.

9 97. Plaintiff, on behalf of himself, and on behalf of the other IDNC Class  
10 members, seeks injunctive and equitable relief under 47 U.S.C. § 227(c)(5) against  
11 Defendants to stop their violations of the TCPA.

12 98. Plaintiff brings this action as a private attorney general, and to  
13 vindicate and enforce an important right affecting the public interest. Plaintiff and  
14 the IDNC Class are therefore entitled to an award of attorneys' fees under Code of  
15 Civil Procedure section 1021.5 for bringing this action.

16 **PRAYER FOR JUDGMENT**

17 WHEREFORE, Plaintiff, Jonathan Avery, individually, and/or behalf of all  
18 other similarly situated, requests the Court grant the following relief against  
19 Defendants Global Exchange Vacation Club and Global Exchange Development  
20 Corp., Resort Vacations, Inc., and Does 1 to 10 as follows:

- 21 a. Enter an order against Defendants pursuant to Federal Rule of Civil  
22 Procedure 23(a), (b)(2) and (b)(3), certifying this action as a class  
action and appointing Plaintiff as the class representative;
- 23 b. Enter an order appointing Preston Law Offices and Kimmel &  
24 Silverman, P.C. as class counsel;
- 25 c. Enter judgment in favor of Plaintiff and the NDNC and IDNC Classes  
26 for all damages available under the TCPA, including actual and  
statutory damages per violation of 47 U.S.C. § 227(c), consistent with  
proof at trial;
- 27 d. Enter a judgment in favor of Plaintiff and the NDNC and IDNC Class  
28 that enjoins Defendants from violating the TCPA's regulations in the  
manner and/or using the means as alleged above and consistent with

proof;

- e. Award Plaintiff and the NDNC and IDNC all expenses of this action, attorneys' fees and costs under California Code of Civil Procedure § 1021.5 in favor of Plaintiff and the NDNC and IDNC Classes, and require Defendants to pay the costs and expenses of class notice and administration; and,
- f. Award Plaintiff and the NDNC and IDNC such further and other relief the Court deems just and appropriate.

Dated: November 3, 2023

By: \_\_\_\_\_

Ethan Preston (263295)  
ep@eplaw.us  
PRESTON LAW OFFICES  
4054 McKinney Avenue, Suite 310  
Dallas, Texas 75204  
Telephone: (972) 564-8340  
Facsimile: (866) 509-1197

Jacob U. Ginsburg (*pro hac vice* pending)  
jginsburg@creditlaw.com  
teamkimmel@creditlaw.com  
KIMMEL & SILVERMAN, P.C.  
30 East Butler Ave.  
Ambler, PA 19002  
Telephone: (267) 468-5374  
Facsimile: 215-540-8817

*Attorneys for Plaintiff, individually, and on behalf of all others similarly situated*



**JURY TRIAL DEMAND**

Plaintiff hereby demands a trial by jury of all issues so triable.

Dated: November 3, 2023

By: \_\_\_\_\_

Ethan Preston (263295)  
ep@eplaw.us  
PRESTON LAW OFFICES  
4054 McKinney Avenue, Suite 310  
Dallas, Texas 75204  
Telephone: (972) 564-8340  
Facsimile: (866) 509-1197

Jacob U. Ginsburg (*pro hac vice* pending)  
jginsburg@creditlaw.com  
teamkimmel@creditlaw.com  
KIMMEL & SILVERMAN, P.C.  
30 East Butler Ave.  
Ambler, PA 19002  
Telephone: (267) 468-5374  
Facsimile: 215-540-8817

*Attorneys for Plaintiff, individually, and on  
behalf of all others similarly situated*